

State of California

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Legislative Change No.

01-34

Bill Number: SB 413

Author: Speier

Chapter Number: 01-883

Laws Affecting Franchise Tax Board: Government Code Sections 8547.4, 8547.8, 8548, 8548.1, 8548.2, 8548.3, 8548.4, 8548.5, 19682, 19683, 19683.1, and 19702

Date Filed with the Secretary of the State: October 14, 2001

SUBJECT: California Whistleblower Protection Act/State Agencies Print, Post, and Email Notice Explaining the Act.

Senate Bill 413 (Speier), as enacted on October 14, 2001, made the following changes to California law:

This act makes various changes to the laws regarding the California Whistleblower Protection Act (CWPA), including requiring state agencies to distribute a notice explaining the CWPA to all employees.

Section 8547.4 of the Government Code is amended.

If the State Auditor finds that an employee may have participated or engaged in improper governmental activities, this act would require the State Auditor to report the findings of its investigation to the employee's appointing power. The appointing power would either serve notice of an adverse action or give a written explanation for not taking adverse action. A copy of the adverse action or written reasons for not taking adverse action would then be filed with the State Personnel Board (SPB) and the State Auditor. If adverse action is not taken, the State Auditor and SPB may file charges against an employee requesting that adverse action be taken.

Section 8547.8 of the Government Code is amended.

This act removes language stating SPB must take adverse action against a state employee or applicant for state employment that intentionally engaged in acts of reprisal if the state employee's appointing power failed to take adverse action. This language is replaced by language stating that any state employee who intentionally engages in acts of reprisal shall be disciplined by adverse action pursuant to procedures outlined under current law.

Section 8548 of the Government Code is added.

This act defines "state agency" as every state office, officer, department, division, bureau, board, and commission, including California State University and the University of California.

Bureau Director

Brian Putler

Date

October 16, 2001

Section 8548.1 of the Government Code is added.

This act requires the State Auditor to prepare a written explanation of the CWPA for state employees by April 1, 2002. This explanation must include, but is not limited to, the following:

- Instructions on how to contact the State Auditor by mail or telephone;
- A general overview of government activities that are considered to be improper and examples of three of the most common types that may be reported to the State Auditor;
- Examples of two of the most commonly reported governmental activities that the State Auditor does not have the authority to investigate;
- An explanation of the whistleblower protection that is available to state employees who report improper governmental activities to the State Auditor;
- The requirement that the State Auditor must protect the anonymity of the employee that reports the improper activity; and
- The State Auditor's authority in relation to violations of law that are discovered during an investigation of improper activities.

Section 8548.2 of the Government Code is added.

This act requires each state agency to prepare a notice to be distributed in an electronic format. The notice must consist of the information outlined in Government Code Section 8548.1. By July 1, 2002, each state agency must print and post the notice, without editing the content, at its state offices where employee notices are maintained.

Section 8548.3 of the Government Code is added.

This act requires state agencies to send the information contained in the notice described in Government Code Section 8548.2 to its employees that have authorized access to electronic mail on July 1, 2002, and annually thereafter.

Section 8548.4 of the Government Code is added.

This act requires the State Auditor to post the information contained in the notice described in Government Code Section 8548.2 on the website of the Bureau of State Audits.

Section 8548.5 of the Government Code is added.

This act provides that the intentional failure of a state agency to comply with the requirements under Government Code Sections 8548.1 through 8548.4 would constitute an improper governmental activity for purposes of the CWPA.

Section 19682 of the Government Code is amended.

This act provides that the appointing power or executive officer of SPB may file charges against a state employee who violates current law regarding prohibited behavior in accordance with current law that outlines the requirements of SPB to investigate, conduct hearings, order relief, and take adverse action.

Section 19683 of the Government Code is amended.

This act adds “employee” to existing law requiring the appropriate supervisor, manager, or appointing authority to receive a copy of SPB hearing or investigation findings. The term “employee” also is added to existing law that allows supervisors, managers, or appointing powers that have been found to have retaliated against the complainant for participating in whistleblower activities to request a hearing before SPB.

This act adds compensatory damages to the list of relief that SPB may provide to a state employee if a violation of the CWPA occurs.

This act clarifies that the appointing power or executive officer of SPB may file charges against a state employee who violates current law regarding prohibited behavior in accordance with current law that outlines the requirements of SPB to investigate, conduct hearings, order relief, and take adverse action.

This act clarifies that if a manager, supervisor, or employee, who is a named party to the retaliation complaint, has violated the CWPA and the violation constitutes legal cause for discipline, SPB must impose a just and proper penalty for that violation. Further, this act requires SPB to notify the appointing power of any manager, supervisor, or employee that is not named a party to a retaliation complaint that may have committed a CWPA violation and to establish procedures for adverse action in such circumstances.

This act removes the requirement that any state employee filing a complaint of retaliation must have previously filed the complaint with the State Auditor or Inspector General.

Section 19683.1 of the Government Code is added.

This act requires SPB to assist the State Auditor in preparing the written explanation of the CWPA for state employees. SPB must provide a written explanation of their role in investigating claims that a state employee has been subject to retaliation as a result of reporting improper governmental activities.

Section 19702 of the Government Code is amended.

This act provides that once a person successfully demonstrates, by a preponderance of evidence, that a protected activity is a contributing factor in any adverse employment action, the burden of proof is placed on the supervisor, manager, employee, or appointing power to demonstrate, by clear and convincing evidence, that the alleged adverse employment action would have occurred even if the person had not engaged in protected activities. If the supervisor, manager, employee, or appointing power fails to meet this burden of proof, the person will have a complete affirmative defense to the adverse employment action. As defined in this act, “adverse employment action” includes various personnel actions such as suspension, disciplinary actions, transfers, promises to provide, or providing any benefit, executing, or threatening to execute any reprisal.

This act is effective and operative January 1, 2002.

This act will not require any reports by the department to the Legislature.